

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DR. MAGDY FOUAD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ISILON SYSTEMS, INC., et al.,

Defendants.

No. C07-1764 MJP

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated October 23, 2009 (the "Stipulation") is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into among Lead Plaintiff Dr. Magdy Fouad ("Lead Plaintiff"), Plaintiff The Southwest Carpenters Pension Trust (together with Lead Plaintiff, the "Plaintiffs") and defendants Isilon Systems, Inc. ("Isilon" or the "Company"), Barry J. Fidelman, Elliott H. Jurgensen, Jr., Gregory L. McAdoo, Matthew S. McIlwain, Sujal M. Patel, James G. Richardson, William D. Ruckelshaus, Stuart W. Fuhlendorf, Steven S. Goldman, Morgan Stanley & Co., Incorporated, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Needham & Company, LLC and RBC Capital Markets Corp. (together, the "Defendants") (Defendants and Plaintiffs are the "Parties"), by and through their respective counsel.

STIPULATION OF SETTLEMENT
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LAW OFFICES OF
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1 WHEREAS:

2 A. Beginning on November 1, 2007, the following three class actions were filed
3 against Defendants in the United States District Court for the Western District of Washington
4 alleging violations of the federal securities laws: *Marcel Youakim v. Isilon Systems, Inc., et al.*,
5 Civil Action No. 07-1764; *Kirby D. Denger and David W. Hooper v. Isilon Systems, Inc., et al.*,
6 Civil Action No. 07-1992; and *Phenil Patadia v. Isilon System, Inc., et al.*, Civil Action No. 07-
7 2011;
8

9 B. By Order dated February 4, 2008, the Honorable Marsha J. Pechman consolidated
10 the above-referenced actions into Civil Action No. 07-1764, under the caption *Dr. Magdy*
11 *Fouad, individually and on behalf of all others similarly situated v. Isilon Systems, Inc., et al.*,
12 (the "Action"). In this same Order, Judge Pechman appointed Dr. Magdy Fouad as Lead
13 Plaintiff and appointed Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") as lead counsel
14 ("Lead Counsel") and Keller Rohrback L.L.P. as liaison counsel ("Liaison Counsel") for the
15 Class;
16

17 C. On April 18, 2008, Plaintiffs filed the Consolidated Class Action Complaint (the
18 "Complaint") asserting claims under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934
19 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by
20 the United States Securities and Exchange Commission (the "SEC"), and under §§ 11, 12 and 15
21 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l, and 77o, against Isilon, Barry J. Fidelman,
22 Elliott H. Jurgensen, Jr., Gregory L. McAdoo, Matthew S. McIlwain, Sujal M. Patel, James G.
23 Richardson, William D. Ruckelshaus, Stuart W. Fuhlendorf, Steven S. Goldman, Morgan
24 Stanley & Co., Incorporated, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Needham &
25 Company, LLC, RBC Capital Markets Corp., Madrona Venture Group, Atlas Venture, Atlas
26

1 Venture Fund V LP, Atlas Venture Entrepreneurs Fund V LP, Atlas Venture Associates V LP,
 2 Sequoia Capital, Sequoia Capital X, Sequoia Technology Partners X LP, Sequoia Capital X
 3 Principals Fund LLC, and SC X Management LLC (the "Original Defendants"). The Complaint
 4 alleged that these defendants disseminated (or controlled those who disseminated) materially
 5 false and misleading statements and failed to disclose material facts regarding Isilon's revenue
 6 recognition practices;

7
 8 D. On June 16, 2008, the Original Defendants filed motions to dismiss the
 9 Complaint. Plaintiffs filed a memorandum in opposition to these motions on July 31, 2008, and
 10 the Original Defendants filed their reply memoranda on September 11, 2008. On December 16,
 11 2008, the Court held a hearing on the Original Defendants' motions to dismiss. By Order dated
 12 December 29, 2008, Judge Pechman (i) granted the motions to dismiss the Complaint filed by
 13 Madrona Venture Group, Atlas Venture, Atlas Venture Fund V LP, Atlas Venture Entrepreneurs
 14 Fund V LP, Atlas Venture Associates V LP, Sequoia Capital, Sequoia Capital X, Sequoia
 15 Technology Partners X LP, Sequoia Capital X Principals Fund LLC, and SC X Management
 16 LLC; (ii) denied the motion to dismiss filed by Morgan Stanley & Co., Incorporated, Merrill
 17 Lynch, Pierce, Fenner & Smith, Incorporated, Needham & Company, LLC and RBC Capital
 18 Markets Corp.; and (iii) granted in part and denied in part the motions to dismiss filed by Isilon,
 19 Barry J. Fidelman, Elliott H. Jurgensen, Jr., Gregory L. McAdoo, Matthew S. McIlwain, Sujal
 20 M. Patel, James G. Richardson, William D. Ruckelshaus, Stuart W. Fuhlendorf and Steven S.
 21 Goldman;

22
 23
 24 E. On July 14, 2009 and September 11, 2009 the Parties participated in a formal
 25 mediation conducted by mediator David Geronemus. As a result of this mediation, the Parties
 26 reached a memorandum of understanding for the resolution of this Action;

1 F. Defendants have denied and continue to deny that they have committed any act or
2 omission giving rise to any liability and/or violation of law. Nonetheless, Defendants have
3 concluded that it is desirable that the Action be fully and finally settled in the manner and upon
4 the terms and conditions set forth in this Stipulation in order to limit further expense and
5 inconvenience with respect to matters at issue in the Action. This Stipulation shall in no event be
6 construed or deemed to be evidence of or an admission or concession by any party of any
7 infirmity in the defenses asserted, or any infirmity in the claims asserted. The Parties to this
8 Stipulation recognize, however, that the Action is being voluntarily settled after advice of
9 counsel, and that the terms of the Settlement are fair, adequate and reasonable;

11 G. Plaintiffs' Counsel has conducted a thorough investigation relating to the claims
12 and the underlying events and transactions alleged in the Complaint. Plaintiffs' Counsel's
13 investigation and discovery included, *inter alia*: (i) review of Isilon's SEC filings; (ii) review of
14 securities analysts' reports and advisories about the Company; (iii) review of wire and press
15 releases published by and regarding the Company; (iv) review of publicly available documents,
16 conference calls and announcements made by Defendants; (v) review of information regularly
17 obtainable on the Internet; (vi) interviews with dozens of witnesses; (vii) review of over 100,000
18 pages of documents produced by Isilon to the SEC concerning Isilon's revenue recognition
19 practices; (viii) discussions with Defendants' Counsel regarding these documents and the claims
20 alleged in the Action; and (ix) research of the applicable law with respect to the claims asserted
21 in the Action and the potential defenses thereto;

24 H. Plaintiffs, by their counsel, have conducted discussions and arm's-length
25 negotiations with counsel for Defendants with respect to a compromise and settlement of the
26 Action with a view to settling the issues in dispute and achieving the best relief possible

1 consistent with the interests of the Class;

2 I. Based upon their investigation, Plaintiffs and their Counsel have concluded that
3 the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs and the
4 Class, and in their best interests, and have agreed to settle the claims raised in the Action
5 pursuant to the terms and provisions of this Stipulation, after considering: (i) the benefits that
6 Plaintiffs and the members of the Class will receive from the settlement of the Action; (ii) the
7 attendant risks of litigation; (iii) the difficulties, expense and delays inherent in such litigation;
8 (iv) the belief of Plaintiffs that the Settlement is fair, reasonable, and adequate, and in the best
9 interest of all Class Members; and (v) the desirability of permitting the Settlement to be
10 consummated as provided by the terms of this Stipulation.

12 NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any
13 lack of merit in the Action whatsoever, and without any admission or concession of any liability
14 or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby
15 STIPULATED AND AGREED, by and among the Parties to this Stipulation, through their
16 respective counsel of record, subject to approval of the Court pursuant to Rule 23(e) of the
17 Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties hereto
18 from the Settlement, that all Released Claims (as defined below) as against the Released Persons
19 (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon
20 and subject to the following terms and conditions:

23 CERTAIN DEFINITIONS

24 1. As used in this Stipulation, the following terms shall have the following
25 meanings:

1 (a) "Authorized Claimant" means a Class Member who submits a timely and
2 valid Proof of Claim and Release form ("Proof of Claim") to the Claims Administrator.

3 (b) "Claims Administrator" means Rust Consulting, Inc., which shall
4 administer the Settlement.

5 (c) "Class" and "Class Members" means all persons or entities who purchased
6 or otherwise acquired Isilon common stock between December 14, 2006 and November 8, 2007,
7 inclusive, including all persons or entities who acquired shares of Isilon common stock pursuant
8 and/or traceable to Isilon's December 2006 initial public offering, and who were damaged
9 thereby. Excluded from the Class are the Defendants; any officers or directors of Isilon during
10 or after the Class Period; any corporation, trust or other entity in which any Defendant has a
11 controlling interest; the members of the immediate families of Barry J. Fidelman, Elliott H.
12 Jurgensen, Jr., Gregory L. McAdoo, Matthew S. McIlwain, Sujal M. Patel, James G. Richardson,
13 William D. Ruckelshaus, Stuart W. Fuhlendorf or Steven S. Goldman (the "Individual
14 Defendants") or their successors, heirs, assigns and legal representatives; and venture capital
15 firms Madrona Venture Group, Atlas Venture, Atlas Venture Fund V LP, Atlas Venture
16 Entrepreneurs Fund V LP, Atlas Venture Associates V LP, Sequoia Capital, Sequoia Capital X,
17 Sequoia Technology Partners X LP, Sequoia Capital X Principals Fund LLC, and SC X
18 Management LLC, and any of their principals. Also excluded from the Class are any putative
19 Class Members who exclude themselves by filing a request for exclusion in accordance with the
20 requirements set forth in the Notice.

21 (d) "Class Period" means the period of time between December 14, 2006 and
22 November 8, 2007, inclusive.
23

1 (e) "Defendants' Counsel" means any counsel representing any defendant in
2 the Action.

3 (f) "Effective Date of Settlement" or "Effective Date" means the date upon
4 which the Settlement contemplated by this Stipulation shall become effective, as set forth in
5 paragraph 28 below.

6 (h) "Escrow Agent" means Eagle Bank.

7 (i) "Lead Counsel" means Cohen Milstein Sellers & Toll PLLC.

8 (j) "Net Settlement Fund" means the Settlement Amount (as defined below),
9 together with any interest earned thereon, less (i) any Taxes, (ii) any amounts incurred for notice
10 and/or administration expenses referred to in paragraphs 8 and 11 hereof, and (iii) the attorneys'
11 fees and expenses awarded to Lead Counsel pursuant to any Fee and Expense Application
12 (referred to in paragraph 10 hereof) and approved by the Court.

13 (k) "Notice" means the Notice of Proposed Settlement of Class Action,
14 Motion for Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing,
15 which is to be sent to members of the Class substantially in the form attached hereto as Exhibit I
16 to Exhibit A.

17 (l) "Order and Final Judgment" means the proposed order to be entered by
18 the Court approving the Settlement substantially in the form attached hereto as Exhibit B.

19 (m) "Order for Notice and Hearing" means the proposed order preliminarily
20 approving the Settlement and directing notice thereof to the Class substantially in the form
21 attached hereto as Exhibit A.

22 (n) "Person" means an individual, corporation, partnership, limited
23 partnership, limited liability company or partnership, association, joint stock company, estate,
24

1 legal representative, trust, unincorporated association, government or any political subdivision or
2 agency thereof, and any business or legal entity and their spouses, heirs, predecessors,
3 successors, representatives, or assignees.

4 (o) "Plaintiffs' Counsel" means any counsel representing any plaintiff in the
5 Action.
6

7 (p) "Plan of Allocation" means a plan or formula of allocation of the Net
8 Settlement Fund to be proposed by Plaintiffs and approved by the Court which shall be described
9 in the Notice to be sent to Class Members in connection with the Settlement.

10 (q) "Related Parties" means each of Defendants' past or present subsidiaries,
11 parents, successors and predecessors, officers, directors, shareholders, partners, agents,
12 employees, attorneys, insurers, spouses and any person, firm, trust, corporation, officer, director
13 or other individual or entity in which any Defendant has a controlling interest or which is related
14 to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in
15 interest or assigns of the Defendants.
16

17 (r) "Released Persons" means each and all of Defendants and their Related
18 Parties.

19 (s) "Released Claims" shall mean any and all claims, debts, demands, rights
20 or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or
21 common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-
22 accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class,
23 and/or individual in nature, including both known claims and "Unknown Claims" (as defined
24 below), (1) that have been asserted in this Action by Plaintiffs against any of the Released
25 Persons, or (2) that could have been asserted in this Action, or in any other action or forum by
26

1 Plaintiffs and/or the members of the Class or any of them against any of the Released Persons
2 which arise out of or are based upon or relate in any way to the allegations, transactions, facts,
3 matters or occurrences, representations or omissions involved, set forth, or referred to in the
4 Action and which related to the purchase or acquisition of Isilon common stock during the Class
5 Period. Released Claims does not include any claims asserted in the derivative action, In re
6 Isilon Systems, Inc. Derivative Litigation, 08-2-09536-3 SEA, pending in Washington Superior
7 Court in and for King County.
8

9 (t) "Settled Defendants' Claims" means any and all claims, rights or causes of
10 action or liabilities whatsoever, whether based on federal, state, local, statutory or common law
11 or any other law, rule or regulation, including both known claims and Unknown Claims (as
12 defined below), that have been or could have been asserted in the Action or any forum by the
13 Defendants, or the Related Parties of any of them against the Plaintiffs, any of the Class
14 Members or their attorneys, which arise out of or relate in any way to the institution, prosecution,
15 or settlement of the Action.
16

17 (u) "Settlement" means the settlement embodied by this Stipulation.

18 (v) "Settlement Fund" means the principal amount of Fifteen Million Dollars
19 (\$15,000,000) in cash (the "Settlement Amount") plus any interest that may accrue thereon as
20 provided herein.
21

22 (w) "Summary Notice" means the Summary Notice of Pendency and Proposed
23 Settlement of Class Action for publication substantially in the form attached as Exhibit 3 to
24 Exhibit A.

25 (x) "Unknown Claims" means any and all Released Claims which Plaintiffs or
26 any Class Member does not know or suspect to exist in his, her or its favor at the time of the

1 release of the Released Persons, and any Settled Defendants' Claims which any Defendant does
 2 not know or suspect to exist in his, her or its favor, which if known by him, her or it might have
 3 affected his, her or its decision(s) with respect to the Settlement. With respect to any and all
 4 Released Claims and Settled Defendants' Claims, the Parties stipulate and agree that upon the
 5 Effective Date, the Plaintiffs and Defendants shall expressly waive, and each Class Member and
 6 Released Person shall be deemed to have waived, and by operation of the Order and Final
 7 Judgment shall have expressly waived, any and all provisions rights and benefits conferred by
 8 any law of any state or territory of the United States, or principle of common law, which is
 9 similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:
 10

11 A general release does not extend to claims which the creditor does not know or
 12 suspect to exist in his or her favor at the time of executing the release, which if
 13 known by him or her must have materially affected his or her settlement with the
 14 debtor.

15 Plaintiffs and Defendants acknowledge, and the Class Members and Released Persons by
 16 operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown
 17 Claims" in the definition of Released Claims and Settled Defendants' Claims was separately
 18 bargained for and was a key element of the Settlement.

19 SCOPE AND EFFECT OF SETTLEMENT

20 2. The obligations incurred pursuant to this Stipulation shall be in full and final
 21 disposition of the Action and any and all Released Claims as against all Released Persons and
 22 any and all Settled Defendants' Claims.

23 3. Upon the Effective Date of this Settlement:

24 (a) Plaintiffs and members of the Class on behalf of themselves and each of
 25 their past or present subsidiaries, affiliates, parents, successors and predecessors, estates, heirs,
 26

1 executors, administrators, and the respective officers, directors, shareholders, agents, legal
 2 representatives, spouses and any persons they represent, shall, with respect to each and every
 3 Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting,
 4 any Released Claims against any of the Released Persons; and

5 (b) Each of the Defendants and Related Parties, on behalf of themselves and
 6 each of their past or present subsidiaries, affiliates, parents, successors and predecessors, estates,
 7 heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal
 8 representatives, spouses and any persons they represent, shall, with respect to each and every
 9 Settled Defendants' Claims, shall release and forever discharge each and every of the Settled
 10 Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants'
 11 Claims.
 12

13 THE SETTLEMENT CONSIDERATION

14
 15 4. Within ten (10) calendar days of the Order for Notice and Hearing, Isilon and its
 16 directors' and officers' insurers shall pay or cause to be paid \$200,000 of the Settlement Amount
 17 into an interest-bearing escrow account on behalf of Plaintiffs and the Class, designated and
 18 controlled by Lead Counsel, which Plaintiffs may use to pay amounts incurred for notice and
 19 administration of the Settlement. This amount does not limit Plaintiffs' Counsel's ability to
 20 incur additional notice and administrative costs and to seek Court approval for reimbursement of
 21 those costs from the Settlement Fund after the balance of the Settlement Fund has been paid.
 22

23 5. Within sixty (60) days of entry of the Order for Notice and Hearing, Isilon and its
 24 directors' and officers' insurers shall pay \$14.8 million into an interest-bearing escrow account
 25 on behalf of Plaintiffs and the Class designated and controlled by Lead Counsel.
 26

6. The Settlement will be non-recapture, i.e., it is not a claims-made settlement.

1 Defendants have no ability to keep or recover any of the settlement monies unless the Settlement
 2 does not become effective.

3 7. (a) The Settlement Fund, net of any Taxes (as defined below) on the income
 4 thereof, shall be used to pay (i) the Notice and Administration Costs referred to in paragraph 8
 5 hereof, (ii) the attorneys' fee and expense award referred to in paragraph 10 hereof, and (iii) the
 6 remaining administration expenses referred to in paragraph 11 hereof. The balance of the
 7 Settlement Fund after the above payments shall be the Net Settlement Fund which shall be
 8 distributed to the Authorized Claimants as provided in paragraphs 12-22 hereof. Any sums
 9 required to be held in escrow hereunder prior to the Effective Date shall be deposited by Lead
 10 Counsel in an account with the Escrow Agent. All funds held by the Escrow Agent shall be
 11 deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court
 12 until such time as the funds shall be distributed or returned to the person(s) paying the same
 13 pursuant to this Stipulation and/or further order of the Court. The Escrow Agent, upon
 14 instructions from Lead Counsel, shall invest any funds in excess of \$150,000 in short term
 15 United States Agency or Treasury Securities, and shall collect and reinvest all interest accrued
 16 thereon. Any funds held in escrow in an amount of less than \$150,000 may be held in an
 17 interest-bearing bank account insured by the FDIC. The Parties hereto agree that the Settlement
 18 Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §
 19 1.468B-1 and that, upon instructions from Lead Counsel, the Claims Administrator, as
 20 administrator of the Settlement Fund within the meaning of Treasury Regulation §1.468B-
 21 2(k)(3), shall be responsible for filing tax returns for the Settlement Fund and paying from the
 22 Settlement Fund any Taxes owed with respect to the Settlement Fund. Defendants agree to
 23 reasonably cooperate with the Claims Administrator and Lead Counsel to provide information
 24
 25
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1 available to them that is needed for filing tax returns for the Settlement Fund and will give their
2 consent to the Settlement Fund's filing of any relation back election.

3 (b) All (i) taxes on the income of the Settlement Fund and (ii) expenses and
4 costs incurred in connection with the taxation of the Settlement Fund (including, without
5 limitation, expenses of tax attorneys and accountants) (collectively, "Taxes") shall be paid out of
6 the Settlement Fund, shall be considered to be a cost of administration of the Settlement and
7 shall be timely paid by the Claims Administrator and Lead Counsel without prior order of the
8 Court. The Defendants and Released Persons shall have no liability or responsibility for the
9 payment of any Taxes. The Settlement Fund shall indemnify and hold the Released Persons
10 harmless for any Taxes (including, without limitation, Taxes payable by reason of any such
11 indemnification).
12

13 ADMINISTRATION

14
15 8. The Claims Administrator shall administer the Settlement under Lead Counsel's
16 supervision and subject to the jurisdiction of the Court. The Released Persons shall have no
17 liability, obligation or responsibility for the administration of the Settlement or disbursement of
18 the Net Settlement Fund, except for their obligation to pay the Settlement Amount, as provided
19 herein, and to make Isilon's transfer records and shareholder information available to Lead
20 Counsel or their agent to the extent necessary to identify and give notice to the Class within five
21 (5) business days of the Court's execution of the Order for Notice and Hearing.
22

23 9. The Settlement Fund shall be applied to pay all reasonable costs and expenses of
24 notice to members of the Class and administration of the Settlement Fund, escrow fees, Taxes,
25 custodial fees and expenses incurred in connection with processing Proofs of Claim or
26 distributing the Settlement Fund from the Settlement Fund. After entry of the Order for Notice

1 and Hearing, and prior to Final Approval, up to \$200,000 may be disbursed from the Settlement
2 Fund without further approval of the Court. Upon the Effective Date, Lead Counsel may pay
3 from the Settlement Fund the costs and expenses associated with the administration of the
4 Settlement and the processing of submitted claims in excess of \$200,000, upon Court approval.

5
6 **ATTORNEYS' FEES AND EXPENSES**

7 10. Lead Counsel will apply to the Court for an award from the Settlement Fund of
8 attorneys' fees and reimbursement of costs and expenses (the "Fee and Expense Application"),
9 plus interest earned in the Settlement Fund on both amounts. Such attorneys' fees and expenses,
10 as are awarded by the Court, shall be paid from the Settlement Fund to Lead Counsel
11 immediately upon the Court's execution of the Order and Final Judgment, notwithstanding the
12 existence of any timely-filed objections thereto, potential for appeal therefrom, or any collateral
13 attack on the Settlement or any part thereof, subject to the obligation of Plaintiffs' Counsel to
14 make appropriate refunds or repayments to the Settlement Fund plus accrued interest at the rate
15 paid on the Settlement Fund by the financial institution holding it, if and when, as a result of any
16 appeal and/or further proceedings on remand, or successful collateral attack, the fee or expense
17 award is reduced or reversed. Defendants will not contest or otherwise negatively comment on
18 Lead Counsel's Fee and Expense Application, or any request for an award to the Plaintiffs (if
19 any such request is made), and such matters are not the subject of any agreement between the
20 Parties other than what is already set forth above in this paragraph. The procedure for and the
21 allowance or disallowance of any application for attorneys' fees and expenses are matters
22 separate and apart from the Settlement and are to be considered by the Court separately from the
23 Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order
24 or proceeding relating solely to an award of attorneys' fees and expenses, or any appeal from any
25
26

1 order relating thereto, or any reversal or modification thereof, shall have no effect on the
 2 Settlement and shall not operate to, or be grounds to, terminate or cancel the Settlement or to
 3 affect or delay the finality of the final judgment approving the Settlement.

4 **ADMINISTRATION EXPENSES AND DISTRIBUTION ORDER**

5
 6 11. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an
 7 order (the "Class Distribution Order") approving the Claims Administrator's administrative
 8 determinations concerning the acceptance and rejection of the claims submitted herein and
 9 approving any fees and expenses not previously applied for, including the fees and expenses of
 10 the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net
 11 Settlement Fund to Authorized Claimants.

12 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

13
 14 12. The Claims Administrator shall determine each Authorized Claimant's *pro rata*
 15 share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as
 16 defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1 to Exhibit
 17 A, or in such other Plan of Allocation as the Court approves).

18 The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is
 19 not a condition of this Stipulation that the Plan of Allocation be approved. Defendants will take
 20 no position with respect to such proposed Plan of Allocation or such plan as may be approved by
 21 the Court.

22
 23 13. Each Authorized Claimant shall be allocated a pro rata share of the Net
 24 Settlement Fund based on his, her, or its Recognized Claim compared to the total Recognized
 25 Claims of all accepted claimants.
 26

1 14. The Defendants shall not have any responsibility for or liability, or any rights or
2 claims, whatsoever with respect to: (i) any act, omission or determination of Plaintiffs' Counsel,
3 the escrow agents or the Claims Administrator, or any of their respective designees or agents, in
4 connection with the administration of the Settlement or otherwise; (ii) the management,
5 investment or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the
6 determination, administration, calculation, or payment of any claims asserted against the
7 Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund;
8 or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection
9 with the taxation of the Settlement Fund or the filing of any returns.
10

11 15. Any member of the Class who does not submit a valid Proof of Claim will not be
12 entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound
13 by all of the terms of this Stipulation and the Settlement, including the terms of the Order and
14 Final Judgment to be entered in the Action and the releases provided for herein, and will be
15 barred from bringing any action against the Released Persons concerning the Released Claims.
16

17 16. The Claims Administrator and Lead Counsel shall have the right, but not the
18 obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim
19 submitted in the interests of achieving substantial justice.
20

21 17. For purposes of determining the extent, if any, to which a Class Member shall be
22 entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

23 (a) Each Class Member shall be required to submit a Proof of Claim (see
24 Exhibit 2 to Exhibit A), supported by such documents as are designated therein, including proof
25 of the claimant's loss, or such other documents or proof as the Claims Administrator, in its
26 discretion, may deem acceptable;

1 (b) All Proofs of Claim must be submitted by the date specified in the Notice
2 unless such period is extended by Order of the Court. Any Class Member who fails to submit a
3 Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this
4 Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class
5 Member is approved), but shall in all other respects be bound by all of the terms of this
6 Stipulation and the Settlement including the terms of the Order and Final Judgment to be entered
7 in the Action and the releases provided for herein, and will be barred from bringing any action
8 against the Released Persons concerning the Released Claims. Provided that it is received before
9 the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have
10 been submitted when posted, if received with a postmark indicated on the envelope and if mailed
11 by first-class mail and addressed in accordance with the instructions thereon. In all other cases,
12 the Proof of Claim shall be deemed to have been submitted when actually received by the Claims
13 Administrator;
14
15

16 (c) Each Proof of Claim shall be submitted to and reviewed by the Claims
17 Administrator, who shall determine in accordance with this Stipulation the extent, if any, to
18 which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e)
19 below. Lead Counsel will submit the Claims Administrator's recommendations to the Court;
20

21 (d) Proofs of Claim that do not meet the submission requirements may be
22 rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate
23 with the claimant in order to remedy the curable deficiencies in the Proofs of Claim submitted.
24 The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose
25 Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefore, and
26 shall indicate in such notice that the claimant whose claim is to be rejected has the right to a

1 review by the Court if the claimant so desires and complies with the requirements of
2 subparagraph (e) below;

3 (e) If any claimant whose claim has been rejected in whole or in part desires
4 to contest such rejection, the claimant must, within twenty (20) calendar days after the date of
5 mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a
6 notice and statement of reasons indicating the claimant's grounds for contesting the rejection
7 along with any supporting documentation, and requesting a review thereof by the Court. If a
8 dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present
9 the request for review to the Court; and

11 (f) The Claims Administrator's recommendations accepting and rejecting
12 claims shall be presented to the Court for its approval in the Class Distribution Order.

14 18. Each claimant shall be deemed to have submitted to the jurisdiction of the Court
15 with respect to the claimant's claim, and the claim will be subject to investigation and discovery
16 under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall
17 be limited to that claimant's status as a Class Member and the validity and amount of the
18 claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in
19 connection with processing of the Proofs of Claim.

21 19. Payment pursuant to this Stipulation shall be deemed final and conclusive against
22 all Class Members. All Class Members whose claims are not approved by the Court shall be
23 barred from participating in distributions from the Net Settlement Fund, but otherwise shall be
24 bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order
25 and Final Judgment to be entered in the Action and the releases provided for herein, and will be
26 barred from bringing any action against the Released Persons concerning the Released Claims.

1 20. All proceedings with respect to the administration, processing and determination
2 of claims and the determination of all controversies relating thereto, including disputed questions
3 of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the
4 Court.

5 21. The Net Settlement Fund shall be distributed to Authorized Claimants by the
6 Claims Administrator only after the Effective Date and after: (i) all claims have been processed,
7 and all claimants whose claims have been rejected or disallowed, in whole or in part, have been
8 notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii)
9 all objections with respect to all rejected or disallowed claims have been resolved by the Court;
10 (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by
11 the Court; and (iv) all costs of administration have been paid.

12 22. If any funds remain in the Net Settlement Fund by reason of uncashed checks, or
13 otherwise, after the Claims Administrator has made reasonable and diligent efforts to have
14 Authorized Claimants who are entitled to participate in the distribution of the Net Settlement
15 Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six
16 (6) months after the initial distribution of such funds shall be used: (a) first to pay any amounts
17 mistakenly omitted from the initial distribution to Authorized Claimants or to pay any late, but
18 otherwise valid and fully documented claims received after the cut-off date used to make the
19 initial distribution, which were not previously authorized by the Court to be paid, provided that
20 such distributions to any late post-distribution claimants meet all of the other criteria for
21 inclusion in the initial distribution, (b) second to pay any additional settlement administration
22 fees and expenses, including those of Lead Counsel as may be approved by the Court, and (c)
23 finally, to be distributed as recommended by Lead Counsel and approved by the Court.
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25
26

TERMS OF ORDER FOR NOTICE AND HEARING

23. Concurrently with their application for preliminary Court approval of the Settlement contemplated by this Stipulation, Plaintiffs' Counsel and Defendants' Counsel jointly shall apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A.

TERMS OF ORDER AND FINAL JUDGMENT

24. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the Parties shall request that the Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit B.

RIGHT OF EXCLUSION AND OBJECTION

25. Any Person may seek to be excluded from the Class and the Settlement provided for by this Stipulation by submitting a written request for exclusion ("Request for Exclusion"). Any Request for Exclusion must be postmarked or received by the Claims Administrator no later than fourteen (14) calendar days before the Final Settlement Hearing date established by the Court. Any Class Member so excluded shall not be bound by the terms of the Stipulation, nor entitled to any of its benefits, and shall not be bound by any Order and Final Judgment and/or other order of the Court entered herein, whether pursuant to this Stipulation or otherwise.

26. Any Class Member who does not exclude himself, herself or itself from the Class and the Settlement shall have the right to submit written objections concerning the Settlement, Plan of Allocation, and/or Lead Counsel's application for attorneys' fees and expenses, which objections shall state all of the reasons for the objection(s). Any written objection(s), and any briefs, affidavits or other evidence submitted in support thereof must be filed with the Clerk of the Court fourteen (14) calendar days before the Settlement Fairness Hearing date established by

1 the Court. All persons and/or entities desiring to attend the Settlement Fairness Hearing and be
 2 heard as objectors must have filed written objections as provided herein, as a condition of
 3 appearing and being heard at such hearing. Any Class Member who does not timely file written
 4 objections to the Settlement pursuant to this paragraph and the Notice shall not be permitted to
 5 object to the Settlement at the Settlement Fairness Hearing, and shall be foreclosed from
 6 objecting to, challenging or otherwise seeking review of the Settlement by appeal or otherwise,
 7 in this Action or in any other action.

9 27. To retract or withdraw a Request for Exclusion, a member of the Class must file a
 10 written notice with the Claims Administrator stating the person's or entity's desire to retract or
 11 withdraw his, her, or its Request for Exclusion and that person's or entity's desire to be bound by
 12 any judgment or settlement in this Action; provided, however, that the filing of such written
 13 notice may be effected by Lead Counsel. Lead Counsel shall promptly notify Defendants'
 14 Counsel of any retraction or withdrawal of a Request for Exclusion.

16 **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

17 28. The Effective Date of Settlement shall be the date when all the following shall
 18 have occurred:

- 19 (a) funding in conformity with paragraphs 4 and 5;
- 20 (b) entry of the Order for Notice and Hearing in all material respects in the
 21 form annexed hereto as Exhibit A;
- 22 (c) approval by the Court of the Settlement, following notice to the Class and
 23 a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
- 24 (d) entry by the Court of an Order and Final Judgment, in all material respects
 25 in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or
 26

1 review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such
 2 Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to
 3 review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order
 4 and final judgment in a form other than that provided above ("Alternative Judgment") and none
 5 of the Parties hereto elect to terminate this Settlement, the date that such Alternative Judgment
 6 becomes final and no longer subject to appeal or review.

8 29. Defendants' Counsel or Lead Counsel shall have the right to terminate the
 9 Settlement and this Stipulation by providing written notice of their election to do so
 10 ("Termination Notice") to all other Parties hereto within thirty (30) calendar days of: (a) the
 11 Court's declining to enter the Order for Notice and Hearing in any material respect; (b) the
 12 Court's refusal to approve this Stipulation or any material part of it; (c) the Court's declining to
 13 enter the Order and Final Judgment in any material respect; (d) the date upon which the Order
 14 and Final Judgment is modified or reversed in any material respect by the Court of Appeals or
 15 the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed
 16 in any material respect by the Court of Appeals or the United States Supreme Court.

18 30. If, prior to the Settlement Hearing, any Persons who otherwise would be members
 19 of the Settlement Class have timely requested exclusion ("Requests for Exclusion") from the
 20 Settlement Class in accordance with the provisions of the Notice Order and the Notice given
 21 pursuant thereto, and such Persons in the aggregate purchased or otherwise acquired a number of
 22 shares of Isilon common stock during the relevant time periods in an amount greater than the
 23 sum specified in a separate "Supplemental Stipulation" between Plaintiffs and Isilon, Isilon shall
 24 have, in its sole and absolute discretion, the option to terminate this Stipulation on behalf of all
 25 Parties in accordance with the procedures set forth in the Supplemental Stipulation. The
 26

1 Plaintiffs shall also have the right to seek a retraction of any Request for Exclusion pursuant to
2 the Supplemental Stipulation. The Supplemental Stipulation will not be filed with the Court. If
3 required by the Court, the Supplemental Stipulation and/or any of its terms may be disclosed in
4 camera to the Court for purposes of approval of the Settlement, but such disclosure shall be
5 carried out to the fullest extent possible in accordance with the practices of the Court so as to
6 preserve the confidentiality of the Supplemental Stipulation, particularly the threshold aggregate
7 number of shares. Copies of all Requests for Exclusion received, together with copies of all
8 written revocations of Requests for Exclusion, shall be delivered to Defendants' counsel as soon
9 as possible after receipt by the Plaintiffs or Lead Counsel but in any event no later than five (5)
10 business days before the Settlement Hearing.
11

12 31. An order of the Court or modification or reversal on appeal of any order of the
13 Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses
14 and interest awarded by the Court to the Plaintiffs or Plaintiffs' Counsel shall not constitute
15 grounds for cancellation or termination of this Stipulation or the Settlement.
16

17 32. Except as otherwise provided herein, in the event the Settlement is terminated or
18 fails to become effective for any reason, then the Parties to this Stipulation shall be deemed to
19 have reverted to their respective litigation positions as of September 11, 2009 and, except as
20 otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and
21 any related orders had not been entered, and any portion of the Settlement Amount previously
22 paid or caused to be paid by Defendants, together with any interest earned thereon, less any
23 Taxes due with respect to such income, and less the costs of administration and notice actually
24 incurred whether paid or not paid, shall be returned within ten (10) business days to the payor of
25 the Settlement Amount.
26

NO ADMISSION OF WRONGDOING

33. This Stipulation and all negotiations, statements, and proceedings in connection herewith shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of Plaintiffs, the Defendants, any member of the Class, or any other person or entity, of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce this Stipulation and settlement contemplated hereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Plaintiffs, any member of the Class, any present or former stockholder of Isilon, or any other person or entity, has or has not suffered any damage, except that the Released Persons may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

MISCELLANEOUS PROVISIONS

34. All of the exhibits attached hereto are material and integral parts hereof and are hereby incorporated by reference as though fully set forth herein.

35. After the filing of this Stipulation but before distribution of any portion of the Settlement Fund, if a case is commenced in respect of any Defendant under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf

1 of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction
2 and any portion thereof is required to be returned, and such amount is not promptly deposited to
3 the Settlement Fund by other Defendants, then, at the election of Lead Counsel, the Parties may
4 jointly move the Court to vacate and set aside the releases given and Order and Final Judgment
5 entered in favor of such Defendant pursuant to this Stipulation, which releases and Order and
6 Final Judgment shall be null and void, and the Parties shall be restored to their respective
7 positions in the Action immediately prior to the exclusion of this Stipulation and any cash
8 amounts in the Settlement Fund shall be returned to the persons or entities that paid such
9 amounts, as provided above.
10

11 36. The Parties to this Stipulation intend the Settlement to be a final and complete
12 resolution of all disputes asserted or which could be asserted by the Class Members against the
13 Released Persons with respect to the Released Claims. Accordingly, Plaintiffs, on behalf of
14 themselves and the Class, and Defendants agree not to assert in any forum that the Action was
15 brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The
16 Parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil
17 Procedure relating to the prosecution, defense, or settlement of the Action. The Parties agree that
18 the amount paid and the other terms of the Settlement were negotiated at arm's-length in good
19 faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with
20 experienced legal counsel.
21

22 37. This Stipulation may not be modified or amended, nor may any of its provisions
23 be waived except by a writing signed by all Parties hereto or their successors-in-interest.
24

25 38. The headings herein are used for the purpose of convenience only and are not
26 meant to have legal effect.

1 39. The administration and consummation of the Settlement as embodied in this
2 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
3 purpose of entering orders providing for awards of attorneys' fees and expenses to Lead Counsel
4 and enforcing the terms of this Stipulation.

5 40. The waiver by one party of any breach of this Stipulation by any other party shall
6 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

7 41. This Stipulation and its exhibits constitute the entire agreement among the Parties
8 hereto concerning the Settlement of the Action, and no representations, warranties, or
9 inducements have been made by any party hereto concerning this Stipulation and its exhibits
10 other than those contained and memorialized in such documents.

11 42. This Stipulation may be executed in one or more counterparts. All executed
12 counterparts and each of them shall be deemed to be one and the same instrument provided that
13 counsel for the Parties to this Stipulation shall exchange among themselves original signed
14 counterparts.

15 43. This Stipulation is binding upon and shall inure to the benefit of the Parties and
16 their respective agents, successors, executors, heirs and assigns.

17 44. The construction, interpretation, operation, effect and validity of this Stipulation,
18 and all documents necessary to effectuate it, shall be governed by the laws of the State of
19 Washington without regard to any choice of law provision, except to the extent that federal law
20 requires that federal law governs.

21 45. This Stipulation shall not be construed more strictly against one party than
22 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel
23 for one of the Parties, it being recognized that it is the result of arm's-length negotiations

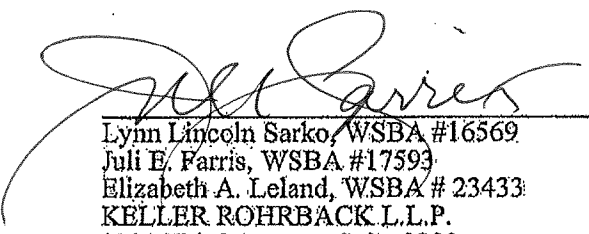
1 between the Parties, and all Parties have contributed substantially and materially to the
2 preparation of this Stipulation.

3 46. All counsel and any other person executing this Stipulation and any of the
4 exhibits hereto, or any related settlement documents, warrant and represent that they have the full
5 authority to do so and that they have the authority to take appropriate action required or
6 permitted to be taken pursuant to the Stipulation to effectuate its terms.
7

8 47. Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully with one
9 another in seeking Court approval of the Order for Notice and Hearing, the Stipulation and the
10 Settlement, and to promptly agree upon and execute all such other documentation as may be
11 reasonably required to obtain final approval by the Court of the Settlement.
12


13 48. The Parties agree that the mediator for the Action, Mr. David Geronemus, shall
14 continue to assist them with any disputes over the terms of the Settlement until such time as the
15 Court grants preliminary approval.

16 Dated: October 23, 2009


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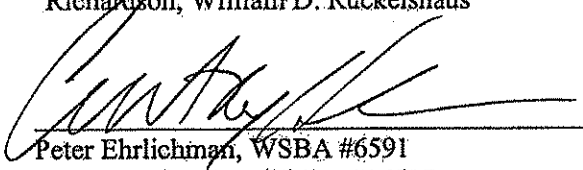
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STIPULATION OF SETTLEMENT
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WRA
permission.

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3 Dated: October 23, 2009
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following ECF participants:

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